Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the Satellite Home	)	
Viewer Improvement Act of 1999:	)	CS Docket No. 00-2
	)	
Application of Network Nonduplication,	)	
Syndicated Exclusivity, and Sports Blackout	)	
Rules to Satellite Retransmissions	)	

COMMENTS OF THE SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION

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COMMENTS OF THE SATELLITE BROADCASTING AND COMMUNICATIONS ASSOCIATION

I. INTRODUCTION AND SUMMARY

The Satellite Broadcasting and Communications Association ("SBCA"), through its undersigned counsel, hereby files these comments in response to the Notice of Proposed Rulemaking ("NPRM") released by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding on January 7, 2000. Through the NPRM, the Commission seeks to implement certain aspects of the Satellite Home View Improvement Act of 1999 ("SHVIA").[1] Section 1008 of SHVIA amends the Communications Act of 1934, as amended, *inter alia,* by adding a new Section 339 ("Carriage of Distant Television Stations by Satellite Carriers") to Title III, which directs the Commission to commence a rulemaking proceeding to extend program exclusivity rules, specifically, the syndicated exclusivity, network nonduplication and sports blackout rules developed in the cable context, to certain satellite-delivered television signals. As explained more fully below, Congress did not intend that these rules apply to the C-band segment of the industry because compliance with these rules is both

[1] Pub. L. No. 106-113, 113 Stat. 1501, App. 1 (1999).

technically and economically infeasible for the declining C-band industry. Furthermore, application of the rules to C-band would serve only to deprive the C-band's primarily rural customers of valuable programming. SBCA therefore urges the Commission to confirm that the C-band segment of the satellite industry is exempt from any network nonduplication, syndicated exclusivity and sports blackout rules that may be adopted in this proceeding.

A. SBCA

SBCA is the national trade association that represents every element involved in the delivery of television programming to consumer households utilizing direct-to-home ("DTH") reception systems. These entities constitute all of the vertical elements of the industry which participate in the DTH distribution chain. They include the manufacturers and operators of satellites; the pioneering technology companies that develop and market encryption and compression techniques and equipment; the program services that are available over satellite and the packagers who market them to consumers; the manufacturers of satellite antennas and receiving equipment; and the independent retailers who market programming and reception systems to consumers at the point of sale. SBCA is submitting these comments on behalf of its members who are involved in the C-band segment of the DTH industry.

B. The C-Band Satellite Service

The C-band segment of the DTH industry is the longest standing of the DTH services operating today. It was initially developed as a backyard project in 1976 by SBCA's Chair Emeritus, Taylor Howard, who constructed his own system in order to better receive satellite television programming in the California foothills. The technology became commercialized in 1980. The C-band segment of the DTH industry is comprised of services transmitted from satellites operating in the Fixed Satellite Service and received by dish antennas of 7-10 feet in

diameter. At the present time, C-band offers approximately 250 channels, which are a mix of subscription channels and channels in the clear.

As the Commission noted in its Sixth Annual Report in the Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming released three weeks ago,[2] the C-band segment of the DTH industry is experiencing a steady decline in subscribership.[3] At its most successful point, in November 1995, the C-band industry had a total of 2,379,912 subscribers.[4] Between June 1998 and June 1999, C-band subscribership fell 12%, from 2,028,225 to 1,783,411, as many customers moved to direct broadcast satellite services, with its smaller antennas.[5] According to Skytrends, another 100,000 subscribers were lost through the end of 1999, reducing the total number of C-band subscribers to 1,648,000.[6]

Despite the steady decline, SBCA expects C-band service to operate for the foreseeable future, primarily because it is a niche distribution medium serving a targeted audience of primarily rural subscribers who frequently are unserved by cable and who have made a substantial investment in C-band technology in order to receive the video programming that many other Americans can receive from a wide variety of sources.[7] This market segment is particularly vulnerable to any changes in C-band service that affect the availability of satellite-delivered broadcast signals, such as the network nonduplication, syndicated exclusivity and

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[2] *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, Sixth Annual Report, CS Docket No. 99-230, FCC 99-418, (January 14, 2000) ("Sixth Annual Report").

[3] *Id.* at ¶ 84.

[4] *See* SkyTRENDS, "DTH, A History in Numbers," September 1999, at 2.

[5] *See* Sixth Annual Report at ¶ 84. By contrast, cable systems nationwide currently have over 64 million subscribers. *See* Warren Publishing, Inc., *Television & Cable Factbook*, Services Volume No. 67 (1999).

[6] *See* SkyTRENDS, "DTH Counts," January 2000, at 3.

[7] *See* Sixth Annual Report at ¶ 84.

sports blackout rules proposed in this proceeding, because, in addition to lacking access to cable, these subscribers frequently cannot receive acceptable over-the-air broadcast signals due to their rural locations. Congress recognized the C-band subscribers' special status in SHVIA and adopted measures to protect them. Therefore, the program exclusivity rules that the Commission may consider or adopt in this proceeding must acknowledge and further the protected status of C-band subscribers.

II. CONGRESS INTENDED TO EXEMPT THE C-BAND SEGMENT OF THE SATELLITE INDUSTRY FROM THE NETWORK NONDUPLICATION, SYNDICATED EXCLUSIVITY, AND SPORTS BLACKOUT RULES CONTEMPLATED BY SHVIA

As the Commission is aware, when Congress adopted the limitations on secondary transmissions by satellite carriers of the signals of distant network stations contained in Section 1005(a)(2)(B)(i) of SHVIA, it expressly exempted C-band services by providing that the limitations on secondary transmissions of network signals "shall not apply to any secondary transmissions by C-band services of network stations that a subscriber to a C-band service received before any termination of such secondary transmissions before October 31, 1999."[8] The Conference Report confirms that Congress, by this section, intended to ensure the continued delivery of distant network stations to C-band dish owners whose service might have been terminated involuntarily.[9] In creating this exemption, Congress emphasized that "this provision does not authorize satellite delivery of network stations to such persons *by any technology other than C-band.*"[10] This exemption thus embodies Congress' special concern for the plight of C-band subscribers and further recognizes that C-band technology -- with its declining

[8] § 1005(a)(2)(B)(iii).

[9] Joint Explanatory Statement of the Committee of Conference, 145 Cong. Rec. H11,792, H11,794.

[10] *Id.*

subscribership and diminishing base of embedded antennas and receivers -- does not present a competitive threat to over-the-air broadcasting.

Furthermore, in a colloquy between Senator Stevens and Senator Hatch during passage of SHVIA on the Senate Floor, Senator Hatch, at the request of Senator Stevens, confirmed that Congress intended to exempt the C-band industry entirely from the various program exclusivity rules being considered by the Commission in this proceeding:

> MR. STEVENS: . . . . As the Senator knows, the C-Band industry is declining and the conferees correctly exempted existing C-Band consumers from numerous provisions in this bill at my request. *It is my understanding the conferees sought to exempt the C-Band industry from the program exclusivity rules that we are applying in the satellite bill. Complying with the program exclusivity rules would be technically and economically unreasonable for the C-Band industry and would only deprive C-Band consumers [of] some of their favorite programming.*
>
> MR. HATCH: Yes, the Senator from Alaska is correct; that was the intent of the conferees. And, *I appreciate the Senator's concerns and pledge to work with him to ensure that when the FCC promulgates these rules, the C-Band industry is exempt and C-Band consumers are protected.*[11]

In adopting rules to implement SHVIA, therefore, the Commission must abide by the intent of Congress to exclude the C-band segment of the DTH industry from the proposed rules.

III. THE COLLOQUY BETWEEN SENATORS STEVENS AND HATCH CORRECTLY DESCRIBES THE TECHNICAL AND ECONOMIC INFEASIBILITY OF APPLYING THE PROGRAM EXCLUSIVITY RULES TO THE C-BAND INDUSTRY

As Senator Stevens rightly recognized, imposing program exclusivity rules on the rapidly declining C-band industry would be technically and economically infeasible and, ultimately, would deprive C-band consumers, most of whom reside in rural and other underserved areas, of network and other television programming that is readily available to other Americans from a wide variety of sources. As discussed more fully below, C-band services are delivered in a

[11] 145 Cong. Rec. S14,988 (Nov. 19, 1999) (emphasis added).

single nationwide feed, while cable services are locally delivered from a community-based headend. This fundamental difference means, as Senators Hatch and Stevens correctly recognized, that it is economically and technically untenable for a C-band satellite carrier to alter its signal market-by-market or subscriber-by-subscriber to comply with rules affecting nearly 1,200 commercial television stations nationwide.

A. Cable Systems Are Distinctly Local Video Delivery Mechanisms

The program exclusivity rules at issue in this proceeding -- syndicated exclusivity, network nonduplication and sports blackout protection -- were developed in the context of terrestrial cable systems. A defining characteristic of cable systems is their connection to the locality in which they operate. While an individual cable system may be owned and managed by a large multiple system operator with a nationwide presence, in fact a cable system is a truly *local* means of video distribution -- physically traversing a specific locality, authorized by a local governmental unit, and subscribed to by local residents.

Thus, when applied to cable operators, the program exclusivity rules are local in scope. The local cable operator is well-acquainted with the relatively small number of television broadcast stations serving its market and for whom it may be required to accord program exclusivity. Basically, to comply with the network nonduplication, syndicated exclusivity or sports blackout rules when required, the local cable operator simply either substitutes a program for the protected programming or deletes the protected program by flipping a switch at its headend, sometimes displaying a message to its customers noting that a specific station in the market has demanded protection. The substitution or deletion occurs for all of the local cable operator's subscribers simultaneously and instantaneously for the duration of the protected

program. Moreover, the cable operator can accomplish this system-wide deletion with a single piece of equipment.[12]

B. C-Band Programming Is Available Only in Single Nationwide Feeds

The contrast between cable systems and the delivery of video programming via C-band satellite could not be more striking. C-band program packages are available from a variety of marketing sources. The satellite signal delivering a particular program package, however, is transmitted nationwide in a single feed and as a result, the content of the program package is not modified for particular locales.

Precisely because of the non-localized nature of C-band service, the requirement to delete programming would be substantially more onerous than in the cable context. One example will demonstrate the extreme burden that could be imposed upon the C-band industry. The Buena Vista 3 Movie Package contains 75 titles. The relevant contract provision grants syndex protection during the first 18 days of two separate windows. Each movie within the package may have different start/stop dates. Thus, a cable operator is currently required to monitor over 300 separate start and stop dates pursuant to a *single* syndex notice. If this package were sold in all 211 television markets and each local broadcast station negotiated for slightly different syndicated exclusivity timing windows, a satellite distributor or carrier could be required to monitor over ***63,000*** dates pursuant to one syndex notice. The burden is multiplied, of course, for each program or program package entitled to syndex protection. The administrative work involved in tracking the 24-hour schedules of every commercial television station within all of the 211 U.S. television markets, regardless of the number of subscribers in each market and in the protected zone contemplated in the rules, would be an enormous burden on the C-band

[12] *Imposing Syndicated Exclusivity Requirements on Satellite Delivery of Television Broadcast Signals to Home Satellite Earth Station Receivers*, 6 FCC Rcd 725, 728 (1991).

industry. The cost of complying with such a regime both in terms of equipment and personnel would be staggering and would inevitably result in the discontinuance of C-band delivery of syndicated and distant network signals. The elimination of such popular programming would only accelerate the decline of the C-band industry.

Compliance with cable-style program exclusivity rules, even if it were technically and economically feasible, would be further impeded by the decentralized nature of the C-band industry's sales structure. As explained below, numerous parties must cooperate in the distribution of satellite-delivered programming. Each of these parties has distinct functions and responsibilities -- the program distributor acquires the rights and assembles the various program packages, the satellite carrier controls the uplink and provides the programming signal, and the Access Control Center (described in more detail below) acts as a clearinghouse for authorization requests for scrambled and pay-per-view signals. Unlike a cable operator, no single party in this complex administrative structure can accomplish the delivery of programming to subscribers end-to-end.

For all of the foregoing reasons, the FCC in 1991 decided against the imposition of the cable syndicated exclusivity rules to the home satellite dish industry.[13] The Commission concluded that application of the rule would be technically infeasible because the equipment "to implement exclusivity protection is not currently available and even if such equipment were developed, manufactured, and placed in service with all possible speed, its distribution in the marketplace would likely be incomplete when the interim compulsory copyright license that is the reason for protection expires at the end of 1994."[14] Furthermore, the Commission found that

[13] *Id.*

[14] *Id.* at 725.

even if it were technically feasible, implementation of the rule would be economically infeasible because the industry would have to recover the costs of the necessary, but yet undeveloped, system-wide and subscriber-owned equipment from its small, rural subscriber base.[15] Although the C-band industry has changed since 1991, as explained above, the same technical and economic bases for the Commission's decision then continue to exist now.

C. Techniques Currently Used to "Syndex-Proof" Satellite Signals Are Not the Answer

The Commission may be aware that, as a service to cable systems subject to the Commission's syndicated exclusivity rules, certain satellite carriers currently offer "syndex-proof" transmission of superstations as distant signals to cable systems. UVTV, for example, began offering a syndex-proof transmission of Station WGN, Chicago, when the Commission reimposed the syndicated exclusivity rules on cable systems in the late 1980s.[16] Syndex-proofing, however, is not the "solution" that would enable the C-band industry to implement the program exclusivity rules if so required. The blackouts and deletions contemplated by the program exclusivity rules cannot be accomplished by extending the techniques used to syndex-proof the programming of superstations for cable to include protected network and sports programs.

The reality is that the superstation programming has been syndex-proofed by stripping out *all* programming that may be protected by syndicated exclusivity in *any* of the 211 U.S. television markets and substituting programming that is not so protected in *any* market. Undoubtedly, some programming that is removed from the signal has not been sold to a local

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[15] *Id.* at 728.

[16] It is important to emphasize that because the C-band satellite carriers deliver a single nationwide feed, this syndex-proofed feed is the same satellite feed received by home dish owners even though the direct-to-home service is not currently subject to program exclusivity rules.

broadcaster and/or is not protected in all markets and therefore could be viewed by cable subscribers and home dish owners alike under the current and proposed rules. However, due to technical limitations (i.e., the single nationwide feed described above) and in order to ensure that the programming complies with syndex requirements in all markets, the satellite carriers must overprotect in removing syndicated programming from the superstation's signal.

The competitive pressure to deliver a continuous stream of programming -- uninterrupted by gaps and blank screens -- also places a tremendous economic burden on the satellite carrier to acquire greater quantities of non-protected programming so that it can deliver a blackout-free signal to cable and DTH customers. Although the syndex-proofing of WGN is necessarily overprotective, it has been economically feasible for UVTV because it delivers the signal to more than 40 million *cable* subscribers, which justifies the additional cost of obtaining substitute programming. In contrast, the other superstations carried by UVTV (KTLA, Los Angeles, WPIX, New York and KWGN, Denver) have far fewer cable subscribers and it is simply not economically feasible for UVTV to syndex-proof them for cable systems. This burden would be particularly onerous for the C-band industry, which has a steadily declining subscribership and market share.

Moreover, because the C-band industry's DTH subscriber base is disproportionately comprised of households that have fewer alternative mechanisms for reception of video programming, imposition of program exclusivity rules would severely disadvantage these subscribers by depriving them of an important source of programming. The nationally distributed superstations that are delivered via C-band satellite are an extremely popular component of C-band program packages because of the added news, entertainment and sports

programming carried on those stations.[17] Imposition of rules that would diminish the content of the superstations provided via the C-band would have a significant, deleterious effect on the primarily rural C-band subscribers who rely on C-band delivery of the superstations.

D. The "Conditional Access" Mechanisms Described by the Commission Are Not Suitable for Implementing Sports Blackouts or Other Program Deletions

The Commission observed in the NPRM that satellite carriers "routinely provide pay-per-view events and descramble programming by use of 'conditional access' mechanisms" and asked whether these mechanisms can be used to blackout sports programming on distant network stations and, if so, at what cost to satellite carriers.[18] The simple answer is that it would be both technically infeasible and economically prohibitive for the C-band industry to use its conditional access mechanisms to blackout sports programming on distant network stations as contemplated by the proposed rules. In addition, because of these technological and economic limitations, the conditional access mechanisms are not suited to accomplish either sports blackouts or the vast number of program deletions required by syndicated exclusivity and network nonduplication, as contemplated by the proposed rules applying to nationally distributed superstations. Moreover, as we explain below, reconfiguring these mechanisms to perform the blackouts and deletions as contemplated by the proposed rules would require a complete overhaul of the systems and the initiation of new protocols, which would be prohibitively expensive for the declining C-band industry, assuming that such reconfiguration is even possible.

The program exclusivity rules currently applied to cable operators require certain broadcast programming and sporting events to be blacked out to cable subscribers within a 35 (or

[17] Currently, there are five (5) nationally distributed superstations that are delivered via the C-band: WGN-TV (Chicago), WPIX-TV (New York), KWGN-TV (Denver), KTLA-TV (Los Angeles) and WWOR-TV (New York). WSBK-TV (Boston), another superstation, is no longer available for C-band retransmission.

[18] NPRM at ¶ 28.

sometimes 55) mile radius. In order for C-band to comply with these rules, it would first require deauthorizing programming to individuals within a specific geographic location. In theory, this could be done in one of two ways: (1) through the Access Control Center ("ACC") utilized by the C-band industry to control access to scrambled programming or (2) through a system that can be used by satellite carriers to delete programs by zip code. In reality, neither system can accurately accomplish the blackouts and deletions as intended by the proposed rules with respect to retransmission of both distant network stations and superstations.

The ACC is a not-for-profit subsidiary of General Instrument doing business as Motorola, Inc.'s Broadband Communications Sector, which serves as a clearinghouse for authorization requests for the C-band industry. The ACC receives authorization requests from C-band program distributors in the form of subscriber identification and zip code information, uses a program called "Geoloc" to convert zip codes to coordinates, creates a composite data stream of authorization messages, and distributes the data stream to programmer uplink sites for insertion into their scrambled video signals. From the uplink sites, the ACC's messages are sent by satellite carriers to satellites and ultimately, in serial fashion, to the set-top boxes of subscribers, thus authorizing the transmission and receipt of scrambled programming. This system was specifically designed to handle authorizations of program packages purchased by subscribers and call-ahead pay-per-view programs. With respect to program packages, the authorization is entered into the system at the time of initial subscription and left in place unless and until the subscriber changes program packages or terminates service. With respect to pay-per-view programs, the system is designed to accommodate a relatively limited number of orders spread out over time.

The ACC's process, however, cannot be used to accomplish sports blackouts or other program deletions contemplated by the proposed rules, primarily because the authorizations are sent in a data stream in *serial* fashion, *i.e.*, one by one, through satellite carriers to C-band subscribers. As an initial matter, imposition of the proposed rules would increase exponentially the burden on satellite programming distributors to monitor thousands of separate start and stop dates and times for the protected programming. Additionally, the number and frequency of authorization signals required to accomplish sports blackouts and syndicated exclusivity and network nonduplication protection for all of the U.S. markets as required by the proposed rules would drastically overload the ACC's capacity to send authorization signals. The ACC would be overwhelmed by continuous and overlapping requests to black out or delete multiple protected programs broadcast by the nation's 1,200 commercial television stations in 211 markets around the country. The system was designed primarily to accommodate requests for authorization, not blackouts and deletions, much less blackouts and deletions of such volume and frequency as would be required by the proposed rules.

Moreover, due to the serial nature of the authorization and deauthorization messages that are contemplated by the proposed rules, consumers would be harmed by imposition of this inappropriate burden on programming distributors and the ACC. For example, if the ACC were used to blackout or delete protected programming in a market with a large number of C-band subscribers, the ACC would have to start sending deauthorization requests in its data stream to subscribers minutes or even hours prior to the event start time in order to process all the deauthorization requests. Therefore, in order to deauthorize all affected households prior to the start of the event, the first households to be processed would likely lose access to programming

for which they were fully eligible. In other words, programs in progress would be blacked out prior to the start of the protected program, thereby harming innocent consumers.

As an alternative to the ACC, satellite carriers may delete programming by zip code by incorporating a deletion signal into the programming signal that is broadcast to subscribers.[19] This system involves the use of the Geoloc program, which converts zip codes to coordinates locating the post office in that particular zip code. Geoloc, however, works only with zip code information, not the 35-mile (or 55-mile) zones contemplated by the program exclusivity rules. Depending on the size of the particular zip code to be affected, utilization of this system would result in the deletion of programming for subscribers who are actually eligible to receive it and/or the receipt of programming by ineligible subscribers. Use of the program, therefore, would result in either greater location protection for local broadcasters than Congress intended (as compared to the rules concerning cable), thus harming innocent consumers, or less protection than intended, resulting in the receipt of protected programming by ineligible households. It is reasonable to assume that in order to avoid potential contract liability with programming rights holders, the satellite carriers will adopt the most conservative approach and simply delete programming within an entire zip code, including eligible households. In other words, where a cable services area encompasses some, but not all, households in a particular zip code, the C-band subscribers in that zip code will lose protected programming even if they are not in the geographic area protected by the rules.

Furthermore, Geoloc is not frequently updated with new and revised zip code information, nor is it particularly accurate. Moreover, Geoloc can accomplish only deletions. Because the C-band only transmits single, national signals, programming cannot be substituted

[19] Fox Sports, when it was available for C-band transmission (it no longer is), used this system to black out programming by zip code.

for those subscribers that live in the zip code where programming was deleted. Like the ACC's system, this approach does not provide a viable solution for the dilemma posed by the proposed rules.

To reconfigure the ACC's system so that it could perform sports blackouts or other program deletions nationwide would involve a complete overhaul of the system, involving every step and every party in the system. Theoretically, the program distributor could develop a program for "geocoding" of subscriber addresses, similar to the methods available to determine "unserved households," and modify its software and equipment to use the data. In addition to the great economic burden associated with this approach, discussed below, the technological hurdles make this alternative infeasible. To geocode each address, a programming distributor's employees would have to manually input each decoder number or unit address for each subscriber within a specified geographic area (determined first by zip codes), and then manually send deauthorizations for each individual subscriber to the ACC. The ACC, after adapting its software and equipment to accept the address information, would then have to send its individual, serial deauthorization signals through a satellite carrier to each subscriber's decoder equipment, which would also have to be modified or replaced in order to accept the new signal. Depending on the number of subscribers required to be deauthorized, this process necessarily would begin well in advance of the time the programming was to be aired, causing subscribers to lose programming that they are eligible to receive preceding the blackout. This process would then have to be reversed within a short time frame (depending on the length of the protected programming) causing C-band customers additional programming loss. The program exclusivity rules would require this process to be repeated many times each day in numerous television markets.

Similarly, to reconfigure the satellite carrier's Geoloc program so that it could identify the 35-mile (or 55-mile) zones contemplated by the program exclusivity rules would require a complete transformation of the current technology. Geoloc is designed to use zip codes. Using a different geographic basis for the program would necessitate development, installation and maintenance of an entirely new system of software and equipment (including customer equipment) at significant cost, especially for the satellite carriers.

The prohibitive cost of geocoding and overhauling Geoloc could be the death knell for the C-band industry. These costs would by necessity be imposed on every segment of the industry -- program distributors, the ACC, satellite carriers and customers -- associated with development, installation and maintenance of new software and equipment. The costs include the expense of developing and licensing geocoding or Geoloc software capable of locating individual subscribers within a particular geographic region, modifying or replacing equipment so that it is compatible with the new geographic basis of the system, and developing technology capable of deauthorizing, reauthorizing and substituting programming during short intervals in hundreds of markets many times a day.

Because the C-band industry is experiencing a steady decline in subscribership which is expected to continue, members of the industry have been conservative in making the large capital investments in research and development of new technologies and methods that would be required for such a dramatic change. Furthermore, the ACC operates on a not-for-profit basis. Costs necessary to operate the ACC authorization system are borne by its users (*i.e.*, C-band program distributors and satellite carriers) through the payment of monthly fees. Given the small number of subscribers served by the industry, the assessment of the costs of a system overhaul likely would result in the total withdrawal of secondary transmissions of the broadcast signals

of both superstations and distant network stations by C-band satellite carriers or, worse, the termination of C-band service entirely. It is unlikely that the C-band industry could recover its costs for retooling either system from subscribers. Any solution that would require increased charges for service or the purchase of additional C-band equipment by subscribers would strand the existing investment by consumers in C-band equipment and further deplete the C-band subscriber base, making its economic feasibility even more tenuous. Even assuming that either new system could be developed and paid for, it is improbable that any such process could be completed and fully implemented before the expiration of the compulsory copyright license in 2004.

In SHVIA, Congress accorded special treatment to C-band subscribers by preserving their right to receive television programming and protecting their investments in this satellite technology. In view of this clear legislative purpose, Congress would not have mandated any system of regulation that would produce the opposite effect.

IV. THE PARITY WITH CABLE THAT CONGRESS ENVISIONED IN APPLYING PROGRAM EXCLUSIVITY RULES TO THE SATELLITE INDUSTRY CANNOT BE ACHIEVED IF THESE RULES ARE APPLIED TO THE C-BAND SERVICE

The Commission properly acknowledges in the NPRM that Congress, in adopting SHVIA, sought to place satellite carriers on an equal footing with respect to the availability of broadcast programming.[20] As the Commission is well aware, because of the substantial cost of the equipment necessary to carry out program deletions, the network nonduplication, syndicated exclusivity and sports blackout rules do not apply to cable systems serving fewer than 1,000

[20] NPRM at ¶ 1.

subscribers.[21] Because C-band service is not localized in the same manner as cable but rather transmits a nationwide signal, exemptions based on the number of subscribers in a given market would not be meaningful and would not provide the kind of economic relief accorded to small cable operators under the current rules. Moreover, as explained above, the non-localized nature of C-band service makes the requirement to delete programming substantially more onerous than in the cable context.

Cable systems are also exempted from complying with syndex when the broadcast station in question is significantly viewed in the cable community unit or when the cable community unity falls within the Grade B contour of the station in question.[22] As with the small cable system exemption, this exemption cannot be meaningfully applied to the C-band industry because they deliver a single nationwide signal and cannot take advantage of such locally-based differences.

Cable systems currently serve more than 64 million subscribers across the nation, while the C-band industry's subscriber base has dropped to fewer than 1.7 million households. This small number alone justifies a blanket exemption from the program exclusivity rules (as Congress intended) for the entire C-band industry. It is noteworthy that both SMATV and MMDS operators enjoy such a blanket exemption from the program exclusivity rules.[23] Some SMATV systems operate in the C-band. It is therefore quite possible -- if the proposed rules are applied to the C-band segment of the DTH industry -- that a C-band dish owner could be deprived of programming that his SMATV neighbor is entitled to receive.

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[21] *Id.* at ¶ 17; 47 C.F.R. §§ 76.95(a) (network nonduplication), 76.156(a) (syndicated exclusivity), 76.67(f) (sports blackout) (1998).

[22] 47 C.F.R. § 76.156(a) (1998).

[23] *See* 47 C.F.R. § 76.5(a) (following Cable Act's definition of "cable system.") SMATV and MMDS do not fall within the definition of cable system because they do not involve "closed transmission paths."

In adopting regulations in this proceeding, the Commission should consider the parity with cable that Congress envisioned and accordingly exempt the C-band industry from implementation of the program exclusivity rules. The public interest would be disserved by the imposition of such a technically, economically and administratively onerous burden on a declining industry that serves less than 1.7 million primarily rural and other underserved citizens. At a minimum, the Commission should defer the imposition of any of these program exclusivity rules on the C-band industry until it can collect additional data and develop a full and complete record on the appropriate economic and/or numerical thresholds for exempting C-band service providers from compliance.

V. CONCLUSION

Congress intended to exempt the C-band segment of the DTH industry from the network nonduplication, syndicated exclusivity and sports blackout rules being considered in this rulemaking proceeding. As Congress recognized, application of the rules to C-band would severely disadvantage the C-band industry with respect to the delivery of programming and deprive its primarily rural customers, who have made substantial investments in C-band equipment, of valuable programming. Given Congress' correct assessment of the technical and

economic infeasibility of implementation of the program exclusivity rules by the C-band industry, the Commission should further Congress' intention to protect the industry and exempt the C-band from the rules that may be adopted in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, James S. Bucholz, do hereby certify that the foregoing Comments were delivered, by messenger, on this 7th day of February, 2000, to the following:

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